

ORDINANCE NO. 2004-3435

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 3 THEREOF ENTITLED "LOBBYISTS," ESTABLISHING EXEMPTIONS FROM DEFINITION OF "LOBBYIST," AMENDING REGISTRATION FEE PROVISIONS, EXPANDING CONTINGENCY FEE PROHIBITION; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Division 3 entitled "Lobbyists," is hereby amended to read as follows:

Sec. 2-481. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory personnel means the members of those city boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the city commissioners.

Autonomous personnel includes but is not limited to the members of the housing authority, personnel board, pension boards, and such other autonomous or semi-autonomous authorities, boards and agencies as are entrusted with the day-to-day policy setting, operation and management of certain defined functions or areas of responsibility.

Commissioners means the mayor and members of the city commission.

Community Based Organization means a not-for-profit association or corporation organized under state or local law to engage in community development activities (including, but not limited to, housing and economic development activities) and has as its primary purpose the improvement of the physical, economic or social environment by addressing one or more of the critical needs of the area, with particular attention to the needs of people with low or moderate incomes.

Departmental personnel means the city manager, all assistant city managers, all department heads, the city attorney, chief deputy city attorney and all assistant city attorneys; however, all departmental personnel when acting in connection with administrative hearings shall not be included for purposes of this division.

Lobbyist means all persons employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any commissioner; any action, decision, recommendation of the city manager or any city board or committee; or any action, decision or recommendation of any city personnel defined in any manner in this section, during the time period of the entire decision-making process on such action, decision or recommendation that foreseeably will be heard or reviewed by the city commission, or a city board or committee. The term specifically includes the principal as well as any agent, attorney, officer or

employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee. as well as any employee ***whose normal scope of employment includes engaged in*** lobbying activities. The term "Lobbyist" specifically excludes the following persons:

Expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings; any person who only appears as a representative of a neighborhood association without compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item; ***and*** any person who only appears as a representative of not-for-profit community based organization for the purpose of requesting a grant without special compensation or reimbursement for the appearance. ~~and employees of a principal whose normal scope of employment does not include lobbying activities.~~

The persons specifically excluded above from the definition of "lobbyist" shall, prior to communicating with subject city personnel, disclose in writing to the city clerk, their name, address, and principal on whose behalf they are communicating.

Neighborhood Association means an organization of residential homeowners and tenants created to address quality of life issues in a defined neighborhood or community.

Quasi-judicial personnel means the members of the planning board, the board of adjustment and such other boards and agencies of the city that perform such quasi-judicial functions. The nuisance abatement board, special master hearings and administrative hearings shall not be included for purposes of this division as to those individuals compelled to appear before said agencies.

Sec. 2-482. Registration.

- (a) All lobbyists shall, before engaging in any lobbying activities, register with the city clerk. Every person required to register shall register on forms prepared by the clerk, pay a registration fee of ~~\$125.00~~ ***\$25.00***, as specified in appendix A and state under oath:
 - (1) His name;
 - (2) His business address;
 - (3) The name and business address of each person or entity which has employed the registrant to lobby;
 - (4) The commissioner or personnel sought to be lobbied; ~~and~~
 - (5) The specific issue on which he has been employed to lobby; ~~and~~
 - (6) The terms and amount of compensation to be paid by each principal to the lobbyist with regard to the specific issue on which the lobbyist has been engaged to lobby. (See, Code Section 2-485, herein.)
- (b) Any change to any information originally filed, or any additional city commissioner or personnel who are also sought to be lobbied shall require that the lobbyist file an amendment to the registration forms, although no additional fee shall be required for such amendment. The lobbyist has a continuing duty to supply information and amend the forms filed throughout the period for which the lobbying occurs.
- (c) If the lobbyist represents a corporation, partnership or trust, the chief officer, partner or beneficiary shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in such corporation, partnership, or trust.
- (d) Separate registration shall be required for each principal represented on each specific issue. Such issue shall be described with as much detail as is practical, including but not limited to a specific description where applicable of a pending request for a proposal, invitation to bid, or public hearing number. ~~The city clerk shall reject any registration statement not providing a~~

- description of the specific issue on which such lobbyist has been employed to lobby.
- (e)(d) Each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal.
- f)(e) ***In addition to the \$25.00 per issue registration fee required in subsection (a) of this section,*** registration of all lobbyists shall be required prior to October 1 of ~~every even-numbered~~ each year; and the fee for ~~biennial~~ ***annual*** registration shall be \$125.00, as specified in appendix A.
- (g)(f) ~~In addition to the matters addressed above, e~~Every registrant shall be required to state the extent of any business, financial, familial or professional relationship, or other relationship giving rise to an appearance of an impropriety, with any current city commissioner or city personnel who is sought to be lobbied as identified on the lobbyist registration form filed.
- (h)(g) The registration fees required by subsections (a) and (f) of this section shall be deposited by the clerk into a separate account and shall be expended ~~only to cover the~~ for the purpose of recording, transcribing, administration, and other costs incurred in administering the provisions of this division maintaining these records for availability to the public. There shall be no fee required for filing a notice of withdrawal, and the ~~city manager shall~~ city commission may in its discretion, waive the registration fee upon a finding of financial hardship, ~~based upon a sworn statement of the applicant~~. Prior to conducting any lobbying on a matter, all lobbyists subject to the registration requirements of this section principals must file a form with the city clerk, signed by the principal or the principal's representative, stating ***under oath*** that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form under oath with the city clerk at the point in time at which a lobbyist is no longer authorized to represent the principal. Any person (except those exempt from the definition of "lobbyist" as set forth in Section 2-481 above) who only appears as a representative of a nonprofit not-for-profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, or indirect or contingent, to express support of or opposition to any item, shall not be required to register with the clerk as required by this section but, shall not be required to pay any registration fees. Copies of registration forms shall be furnished to each commissioner or other personnel named on the forms.
- (i)(h) All members of the city commission and all city personnel shall be diligent to ascertain whether persons required to register pursuant to this section have complied ~~with the requirements of this division~~. Commissioners or city personnel may not knowingly permit themselves to be lobbied by a person who is not registered pursuant to this section to lobby the commissioner or the relevant committee, board or city personnel.
- (j)(i) The city clerk shall publish logs on a quarterly and annual basis reflecting the lobbyist registrations filed. All logs required by this section shall be prepared in a manner substantially similar to the logs prepared for the state legislature pursuant to F.S. § 11.045.

Sec. 2-483. Exceptions to registration.

- (a) Any public officer, employee or appointee or any person or entity in contractual privity with the city who only appears in his official capacity shall not be required to register as a lobbyist.
- (b) Any person who only appears in his individual capacity ***at a public hearing before the city commission, planning board, board of adjustment, or other board or committee and has no other communication with the personnel defined in section 2-481***, for the purpose of self-representation without compensation or reimbursement, whether direct, ~~or~~ indirect ~~or contingent~~, to express support of or opposition to any item, shall not be required to register as a lobbyist, including but not limited to those who are members of homeowner or

neighborhood associations. All speakers shall, however, sign up on forms available at the public hearing. Additionally, any person requested to appear before any city personnel, board or commission, or any person compelled to answer for or appealing a code violation, a nuisance abatement board hearing, a special master hearing or an administrative hearing shall not be required to register, nor shall any agent, attorney, officer or employee of such person.

Sec. 2-484. Sign-in logs.

In addition to the registration requirements addressed above, all city departments, including the offices of the mayor and city commission, the offices of the city manager, and the offices of the city attorney, shall maintain signed sign-in logs for all noncity employees or personnel for registration when they meet with any personnel as defined in section 2-481.

Sec. 2-485. List of expenditures; fee disclosure; reporting requirements.

- (a) On October 1 of each year, lobbyists subject to lobbyist registration requirements shall submit to the city clerk a signed statement under oath as provided herein listing all lobbying expenditures, as well as compensation received, for the preceding calendar year with regard to the specific issue on which the lobbyist has been engaged to lobby. A statement shall be filed even if there have been no expenditures or compensation during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events.
- (b) Each lobbyist and his/her principal shall, before engaging in any lobbying activities, submit to the city clerk a joint signed statement under oath disclosing the terms and amount of compensation to be paid by each principal to the lobbyist with regard to the specific issue on which the lobbyist has been engaged to lobby. If no compensation will be paid concerning the subject lobby services, a statement shall nonetheless be filed reflecting as such.
- ~~(e)~~ ~~Any person who only appears as a representative of a nonprofit corporation or entity (such as a charitable organization, a neighborhood or home owner association, a local chamber of commerce or trade union), without special compensation for the appearance, whether direct or indirect, to express support of or opposition to any item, shall, in addition to not having to register as a lobbyist per subsection 2-482(h), be further exempt from this section's requirement of fee disclosure.~~
- ~~(d)~~(c) Any change to information originally filed shall require that the lobbyist (and principal under subsection (b) above) file, within three business days from such changed circumstances, a signed statement under oath amending the above-referenced reports; additionally, in the event official action on the specific lobbied issue is scheduled to occur during said three day period, the lobbyist and principal shall prior to said official action, further disclose the amendment by publicly stating on the record at which the official action is to occur the subject amendment. The lobbyist and principal have a continuing duty to supply accurate information and amend said reports when so needed.
- ~~(e)~~(d) The city clerk shall notify any lobbyist (or principal) who fails to timely file the expenditure or fee disclosure reports referenced in sections (a) and (b) above. In addition to any other penalties which may be imposed as provided in section 2-485.1, a fine of \$50.00 per day shall be assessed for reports filed after the due date. Any lobbyist who fails to file the required expenditure report by December 1 shall be automatically suspended from lobbying until all fines are paid, unless the fine has been appealed to the Miami Dade County Ethics Commission.
- ~~(f)~~(e) The city clerk shall notify the Miami-Dade County Commission on Ethics and Public Trust of the failure of a lobbyist (or principal) to file either of the reports referenced above and/or pay the assessed fines after notification.

- ~~(g)~~(f) A lobbyist (or principal) may appeal a fine and may request a hearing before the Miami-Dade Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Miami-Dade Commission on Ethics and Public Trust within 15 calendar days of receipt of the notification of the failure to file the required disclosure form. The Miami-Dade Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or in part, based on good cause shown.

Sec. 2-485.1. Penalties.

- (a) A finding by the Miami-Dade County Commission on Ethics and Public Trust that a person has violated this division shall subject said person to those penalties set forth within subsections 2-11.1(s) and ~~(u)~~(z) of the Metropolitan Dade County Code, said penalties including admonition, public reprimand, fines, as well as prohibitions from registering as a lobbyist or engaging in lobbying activities before the city.
- Also, a bidder or proposer shall be subject to the debarment provisions of ~~sections 2-397 through 2-406~~ Miami Beach City Code Chapter 2, Division 5 as if the bidder or proposer were a contractor where the bidder or proposer has violated this division either directly or indirectly or any combination thereof, on three or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this division shall also render the contract voidable. The city manager shall include the provisions of this subsection in all city bid documents, RFP, RFQ, RFLI; provided, however, that failure to do so shall not render any contract entered into as the result of such failure illegal per se.
- (b) Except as otherwise provided in subsection (a) herein, the validity of any action or determination of the city commission or city personnel, board or committee, shall not be affected by the failure of any person to comply with the provisions of this division.

Sec. 2-485.2. Prohibited lobbying activities.

Any person or entity retained as a lobbyist by the city is prohibited from lobbying any city officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFO, RFLI, bid, request for ruling or other determination, contract or controversy on behalf of a third party for the length of the contract or other agreement between the lobbyist and the city.

Sec. 2-485.3. Contingency fee prohibited.

No person or entity may, in whole or in part, pay, give or agree to pay or give a contingency fee to a ~~lobbyist~~ another person. No ~~lobbyist~~ person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) an ordinance, resolution, action or decision of the city commission; (2) any action, decision or recommendation of the city manager or any city board or committee; or (3) any action, decision or recommendation of city personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission, or a city board or committee.

SECTION 2. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

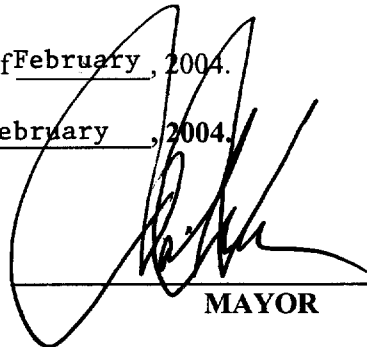
SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect the 14th day of February, 2004.

PASSED and ADOPTED this 4th day of February, 2004.


ATTEST:


CITY CLERK


MAYOR

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**


City Attorney 2-6-04
Date